

January 30, 1997

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON

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REPORT AND RECOMMENDATION
TO THE METROPOLITAN KING COUNTY COUNCIL.

SUBJECT: Department of Development and Environmental Services File No. **S098609**
Proposed Ordinance No. **96-968**

Proposed Plat of
TIMBERLINE HIGHLANDS DIVISION 2

Location: Generally located at the end of 203rd Place Northeast and between Northeast 34th Court and Northeast 30th Court (if it were to be extended).

Owner/
Developer: William E. Buchan Construction
11555 Northrup Way
Bellevue, WA 98004

SUMMARY OF RECOMMENDATIONS:

Division's Preliminary: Approve, subject to conditions
Division's Final: Approve, subject to conditions (modified)
Examiner: Approve, subject to conditions (modified)

PRELIMINARY MATTERS:

Application submitted: July 11, 1986

EXAMINER PROCEEDINGS:

Hearing Opened: January 16, 1997, 9:15 A.M.
Hearing Closed: January 16, 1997, 1:45 P.M.

Participants at the proceedings and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Office of the King County Hearing Examiner.

ISSUES ADDRESSED:

- Vesting
- Drainage and erosion
- Setbacks from steep slopes
- Sensitive area buffers

FINDINGS, CONCLUSIONS & RECOMMENDATION: Having reviewed the record in this matter, the Examiner now makes and enters the following:

FINDINGS:

1. General Information:

Owner/Developer: William E. Buchan Construction
11555 Northrup Way
Bellevue, WA 98004
(206) 828-6424

STR: 20-25-06

Location: Generally located at the end of 203rd Place Northeast and between Northeast 34th Court and Northeast 30th Court (if it were to be extended).

Zoning: RS 15,000

Acreage: 16

Number of Lots: 9

Typical Lot Size: Ranges from approximately 13,225 to 29,950 square feet

Proposed Use: Detached single-family residences

Sewage Disposal: Sammamish Water and Sewer District

Water Supply: Sammamish Water and Sewer District

Fire District: Fire District #34 (Redmond)

School District: Lake Washington #414

Date of Application: July 11, 1986

2. Except as modified herein, the facts set forth in the King County Land Use Services Division's ("LUSD") preliminary report to the King County Hearing Examiner for the January 16, 1997, public hearing are found to be correct and are incorporated herein by reference. Copies of the LUSD report will be attached hereto for submittal to the Metropolitan King County Council. The LUSD staff recommends approval of the application, subject to conditions.
3. Timberline Highlands, Division 2 reputedly is King County's oldest living preliminary plat application, having been originally filed on July 11, 1986. The fact that it has been languishing so long within the regulatory system is primarily attributable to the fact that its fate has been tied to that of the much larger Timberline Ridge plat application lying immediately to its east.

In October, 1986, a threshold determination appeal was granted with respect to Timberline Ridge, which required the performance of an Environmental Impact Statement ("EIS") based primarily on drainage and traffic issues. Soon thereafter at a hearing held for Timberline Highlands Division 2 on November 19, 1986, the instant preliminary plat application was placed on hold by the Hearing Examiner pending further SEPA review of its environmental impacts. Eventually the determination of nonsignificance issued for the plat application on September 16, 1986, was withdrawn, and a determination of significance issued in its place by the King County Environmental Division on January 20, 1988. Rather than perform a separate EIS on similar issues, the Timberline Highlands Div. 2 applicant opted to wait for the completion of the Timberline Ridge EIS in the anticipation that such EIS might be adopted by the County for the smaller adjacent parcel as well.

4. The Draft Environmental Impact Statement for Timberline Ridge was issued on December 27, 1988, with a Final EIS ("FEIS") published on September 18, 1990. Thereafter the proposed drainage plan for Timberline Ridge was revised to divert all site runoff away from the steep erosive ravines emptying west into Lake Sammamish and provide instead for the tightlining of all flows directly to an outfall within the lake. This revision resulted in issuance of an Addendum to the FEIS for Timberline Ridge, which was published August 25, 1992. The Timberline Ridge plat application then went to public hearing in late 1992 and, after the completion of appeals, was approved by the King County Council on April 5, 1993, under authority of Ordinance No. 10782. However, project opponents took a further appeal to the Shoreline Hearings Board challenging the permit for the proposed drainage outfall, which appeal resulted in an unenthusiastic affirmation of the shoreline permit by the Board on November 7, 1994. Dealing with the critical issue of phosphorous loading to Lake Sammamish from project runoff, the Hearings Board concluded that "the contribution of pollutants by the proposed project will be insignificant alone but may cause substantial degradation of water quality in conjunction with existing and planned development". The Board's concern was underscored by its perception that neither the County nor the State Department of Ecology had implemented an effective mechanism for analyzing and controlling cumulative water quality impacts to Lake Sammamish.
5. By this point the destiny of Timberline Highlands Div. 2 had been inextricably bound to that of Timberline Ridge. The drainage plan revision analyzed within the 1992 Addendum to the Timberline Ridge FEIS proposed the diversion of surface water runoff from both Timberline Highlands Divisions 1 and 2 into the Timberline Ridge tightline system. This modification appears to have been inspired by the performance of the Division 1 drainage system, which had installed an outfall to the Division 2 slopes at a location lying between currently proposed Lots 2 and 6. It appears that Division 1 drainage flows had resulted in massive erosion within the downstream ravine system and the delivery of a large amount of sediment to Lake Sammamish. Under the Addendum plan, surface flows from both already developed Timberline Highlands Division 1 and proposed Division 2 are to be diverted to the Timberline Ridge tightline system.
6. After completion of the Shoreline Hearings Board appeal, the Applicant for Timberline Highlands Division 2 began to urge the King County SEPA official to adopt the Timberline Ridge environmental documents as the Division 2 EIS. After completion of a site specific wetland analysis and geotechnical report, such adoption did in fact occur on April 30, 1996, when King County issued a document grandly entitled "Second Addendum to, and Adoption of, the Timberline Ridge Final Environmental Impact Statement for Timberline Highlands, Division 2." Issuance of this document marked the completion of King County's review of the

Timberline Highlands Division 2 preliminary plat application under SEPA and enabled the proposal to complete its processing and be scheduled for public hearing.

7. The long and convoluted application history for Timberline Highlands Division 2 has raised some interesting questions as to the vesting dates pursuant to which the application is to be reviewed for regulatory purposes. The Applicant's attorney, Joel Haggard, has submitted a learned discourse on the vesting issues which argues that the July 11, 1986, date upon which the application and environmental checklist were submitted should be regarded as the vesting date for all purposes. This argument is based upon the general rule within Washington State that a project proposal is deemed vested on the date upon which a completed application is filed. In so arguing Mr. Haggard invites the County to ignore the provisions contained within WAC 197-11-660(1)(a), which state that under SEPA "Mitigations measures or denials shall be based on policies, plans, rules, or regulations formally designated by the agency . . . as a basis for the exercise of substantive authority and in effect when the DNS or the DEIS is issued." Mr. Haggard suggests that the County should disregard the vesting date for mitigations based on SEPA authority established by WAC 197-11-660 because of dictum contained within the case of Victoria Partnership vs Seattle, 59 Wash. App. 592 (1990) which suggests that a separate vesting date for SEPA conditions is inappropriate.

We decline to follow Mr. Haggard's lead on this issue, noting that by refusing to apply WAC 197-11-660(1)(a) the County would be adjudging it unconstitutional, an exercise which is clearly beyond the jurisdictional authority of this local administrative tribunal. We also observe that WAC 197-11-660 has been in effect since 1984 and has been relied upon countless times by King County and other jurisdictions across the state as a basis for imposing mitigations founded on SEPA. We believe that if the consensus of judicial opinion were truly that WAC 197-11-660(1)(a) imposes an unconstitutional limitation on the State's vesting doctrine, some court would surely have informed us of this fact and held the provision invalid long before this point in time.

8. We are satisfied that for zoning and plat review purposes generally the July 11, 1986, application date should be regarded as its vesting date, although an argument can be made that the application was not complete at that time in any meaningful functional sense. First, the Health Department in 1986 had declined to approve the project's water and sewer certificates based on the fact that Metro had not yet let construction contracts for the North Lake Sammamish Interceptor Extension that was necessary to serve the project. Construction of that facility appears to have been completed some time in 1989. Moreover, we note that the water and sewer certificates most recently issued for the project were executed in 1994 and need to be renewed.

A more substantial concern deals with the functional completeness of the plat's drainage plan. By proposing to tie Timberline Highland Division 2 drainage into the tightline system for Timberline Ridge, the plat cannot be said to have had a viable drainage plan until the Shoreline Hearings Board appeal process for Timberline Ridge was completed in November 1994.

9. Uncertainty also surrounds the issue of when the application should be considered vested for purposes of imposing mitigations under SEPA authority pursuant to WAC 197-11-660(1)(a). Although its notice adopting the Timberline Ridge environmental studies as EIS documents for Timberline Highlands Division 2 was issued on April 30, 1996, the Department of Development and Environmental Services ("DDES") seems reluctant to view that date as the

SEPA vesting event because the adoption document does not appear on its face to either be a DNS or a DEIS. Instead, DDES has suggested that December 27, 1988, the publication date for the Timberline Ridge Draft Impact Statement, should also be considered the vesting date for imposition of SEPA conditions for Division 2 under authority of WAC 197-11-660.

10. While we agree that the SEPA rules could be clearer about the legal effect of adoption with respect to WAC 197-11-660 mitigations, the adoption document nonetheless needs to be regarded as the functional equivalent of a DNS. Like a DNS, an adoption notice is a determination by the SEPA official that information describing the environmental impacts of the proposal exists sufficient to conclude that its impacts will be less than significant. Unlike the usual DNS, the adoption document relies on not only the checklist and site specific studies but also on studies performed under SEPA authority for other projects. When the State legislature in 1994 enacted ESHB 1724, it set forth a policy of avoiding duplication within SEPA review of impact studies when relevant project effects have been previously documented in prior environmental materials. This policy would be compromised if in adopting older environmental studies the mitigation authority of a local jurisdiction were tied to the issuance date of the earlier document. A jurisdiction would be reluctant to adopt an earlier study if it entailed sacrificing the mitigation authority conferred by current regulations. Therefore, both on a functional basis and in order to avoid discouraging jurisdictions from adopting earlier environmental documents, the date of adoption must be regarded as the SEPA vesting date under WAC 197-11-660(1)(a).
11. The review that this application has received from DDES staff presents an odd patchwork of old and new regulatory provisions. The zoning provisions applied to the plat were those in effect in the mid-1980s under KCC Title 21. Roads are to be constructed pursuant to the requirements of the 1979 Road Standards, but the 1990 Surface Water Design Manual (including its most recent updates) has been applied to the project because that's what the Timberline Ridge developer agreed to. For sensitive areas issues the regulations applied to the project were also those in effect during the mid-1980s, i.e. prior to the adoption in 1990 of the modern sensitive areas code. These include, as recently negotiated between the staff and Applicant at the public hearing, the February 1, 1987, "Administrative Guideline on Building Setbacks from Hazardous Slopes," even though it was in fact issued after the plat application was filed. As will be further elaborated below, we have no interest in upsetting these *ad hoc* arrangements (even when they seem to be logically questionable), provided that the environmental impacts of the proposal are in fact adequately mitigated.
12. As described within the August 25, 1992, Addendum to the Timberline Ridge EIS, the drainage system currently proposed for Timberline Ridge will also receive the bulk of runoff from Timberline Highlands Division 2. As currently conceptualized, nearly all runoff from the eastern flank of lots (numbers 3, 4, 5, 8, and 9) will be collected within the street system and directed to the Timberline Ridge water quality pond for treatment, then discharged to Lake Sammamish through the Timberline Ridge tightline. Flows from the four westerly plat lots will be divided between the street collection system and onsite infiltration. Some infiltration is deemed necessary to maintain base flows to streams and wetlands to the west, but such flows need to be limited in order to avoid de-stabilizing adjacent steep slopes. Specific infiltration requirements will be determined at the time of final design. In coordination with the overall system requirements approved for Timberline Ridge, a low flow discharge of approximately 20 gallons per minute will be maintained to the Division 2 slopes in order to maintain base flows within the stream system while assuring that such flows do not rise to an erosive level.

13. As identified within the wetland report performed for the Applicant by Terra Associates dated November 26, 1996, the northernmost of the two swales located onsite qualifies as a Class 3 stream under 1990 King County Sensitive Areas Ordinance provisions. The staff plat conditions require no protection for this stream, even though it is possible that the upper end of its channel and regulatory buffer may be impacted by proposed grading for Lot 2 and the onsite road system. The Timberline Ridge environmental documents suggest that most flows which enter into this channel consist of the runoff from Timberland Highlands Division 1 which is currently eroding the downstream system and is scheduled to be eliminated by the Timberline Ridge tightline. The stream functions of this channel will be greatly diminished after completion of the Timberline Ridge tightline, and no adverse environmental impacts will result from failure to protect the upper end of stream bed. Accordingly, we find no basis to extend under SEPA authority sensitive areas protection to this stream, noting that most of the channel will receive *de facto* preservation within the buffers established for the associated wetland.
14. A large Class 2 forested wetland lies downslope from the upland lots proposed for Timberline Highlands Division 2. The edge of this wetland has been delineated from the southern boundary of the plat north to the ravine that lies between Lots 2 and 6. Based on the wetland mitigations proposed within the Timberline Ridge EIS, a 50-foot buffer is to be established to protect this wetland, which may be averaged down to a 25-foot width in locations where a protective fence is provided. Such wetland buffer averaging is proposed by the Applicant adjacent to Lot 9, where 25 feet up-slope from the wetland edge a major area of fill is proposed to be contained by a rockery wall. While this proposal appears technically consistent with the Timberline Ridge EIS, DDES wetland scientist Laura Casey questioned the feasibility of being able to protect the buffer from impactful intrusions associated with construction of the rockery and fill.
15. Under current King County sensitive areas requirements this onsite wetland would be designated a Class 2 forested wetland requiring a 50-foot undisturbed buffer. KCC 21A.24.320.B permits averaging of the buffer width but only if "it will provide additional protection to wetlands or enhance their functions"--a circumstance which is clearly not met by the instant proposal. Based on the high probability that placement of fill and construction of a rock retaining wall on a slope within 25 feet of the wetland edge will cause erosional impacts to the wetland and destroy buffer vegetation, we find that the proposed fill and rockery will have adverse impacts to the wetland and its buffer unless more stringent regulatory setback requirements are met. Under the authority conferred by WAC 197-11-660 current buffer and setback requirements will be imposed for the protection of the wetland. This may reduce the developable area within Lot 9 by nearly 4,000 square feet, but at 35,810 square feet it is by far the largest lot within the plat. The buildable area remaining after standard wetland buffers and setbacks are provided will be more than adequate.

Moreover, we conclude that a clearer and more easily enforceable form of sensitive areas protection is provided by current regulatory requirements for the dedication of sensitive areas tracts as opposed to prior provisions which allowed the establishment of native growth protection easements. Imposition of this higher level of protection is warranted by the history of massive illegal vegetation removal which occurred with the Applicant's forbearance on the steep slopes below Timberline Highlands Division 1 during its construction in the late 1980s.

16. Timberline Highlands Division 2 sits on the edge of the Sammamish Plateau overlooking the

Lake. Although the western two-thirds of the property clearly lies within steep ravines and wetland areas off limits to development activity, actual determination of the outer edge of the developable portion of the site depends upon which set of development regulations are applied to the property. With respect to steep slope hazard areas, the Applicant has agreed to the use of the 1987 Administrative Guidelines governing building setbacks from hazardous slopes, which provides a level of protection roughly equivalent to that required under the current Sensitive Areas Ordinance ("SAO"). A 50-foot setback is required from the top of any slopes greater than 40%, which may be reduced based on appropriate findings within a geotechnical study. In addition, the Timberline Ridge EIS adopted for this proposal provides that no residence shall be located closer than 25 feet from the top of a 40% slope. Current SAO steep slope provisions differ from those contained in the 1987 Administrative Guidelines principally in requiring that the steep slope setback be contained within a buffer and imposing an additional 15-foot building setback line beyond the buffer.

17. In addition to containing a steep slope hazard area, the Timberline Highlands Division No. 2 property also contains mapped landslide and erosion hazards. The ravine areas and portions of Lots 1, 2 and 9 also lie within the "no disturbance zone" established along the western slope of the Sammamish Plateau by both the 1993 East Lake Sammamish Community Plan and the later Basin Plan. According to these documents, the up-slope boundary of the no disturbance zone should be established at the first obvious slope break along the western edge of the upland plateau, a requirement which has generally been interpreted as occurring at the 15% slope boundary. The erosion hazard designation results from the presence on the property of Alderwood-Kitsap soils which are considered highly erosive at slopes in excess of 15%.
18. Landslide hazard issues seem to have been reasonably well circumscribed by the geotechnical studies. Although there are surface indications of slippage, the upper soils appear to be underlain by dense sands which are considered stable and unlikely to experience large scale failure. With controlled drainage directing surface flows away from the slope edges, it is expected that landslide hazard conditions can be avoided.
19. The proposed surface water tightline system provides mitigation for erosion and steep slope hazard risks in sufficient degree that strict application of the "no disturbance zone" contained in the Community and Basins Plans is not required in order to avoid adverse environmental impacts. On the other hand, given the sensitive nature of the area overlooking Lake Sammamish and the multiplicity of sensitive areas risk factors characterizing that environment, we find that the fundamental structure of the current SAO regulatory system should be applied selectively to plat development on the basis of SEPA to reduce the probability of adverse environmental impacts. Applicable SAO requirements implemented within the proposed conditions include imposition of the basic 50-foot steep slope buffer and 15-foot building setback requirements, the use of sensitive areas tracts, and the imposition of sensitive areas clearing and grading restrictions.
20. Area traffic issues were analyzed within the Timberline Ridge EIS and more recently within an April 1996 traffic analysis performed for the proposed elementary school site directly east of the plat. The school traffic study predicts satisfactory traffic operations at the Northeast 37th Way intersection with Sahalee Way after Timberline Ridge installs a signal at that location. Secondary access to the neighborhood will be achieved either when 205th Place Northeast connects south through Timberline Ridge to Northeast 19th Place and 211th Way Northeast or when a recently approved cluster of plats to the northwest create a secondary access to SR 202

via Northeast 192nd Avenue. Without completion of one of these secondary access routes, the entire neighborhood remains a vast single access cul de sac system in violation of the 100-lot rule enunciated by the King County Road Standards. The Applicant has agreed to a condition which requires the construction of a secondary access route to the neighborhood prior to the recording of Timberline Highlands Division 2.

21. The plat's onsite road system has been recently revised to feature a cul de sac rather than a loop road east into Timberline Ridge as originally proposed. The staff conditions had recommended that the cul de sac be connected to the adjacent elementary school site by a 10-foot wide pedestrian tract. The Applicant has objected to this requirement because it would involve path construction through a relatively steep area and might necessitate additional bank stabilization. Since the walking distance by sidewalk from the proposed plat through the existing Timberline Highlands neighborhood to the school site will only be about 1,500 feet, elimination of the pedestrian path appears to be an acceptable option.
22. Argent Ventures Corporation, which owns the 20 acres lying directly west of Timberline Highlands Division 2, requested that the plat public hearing be continued approximately a month in order to submit survey data in support of a proposed easement route through Lots 1 and 2 to access a portion of the Argent site. Although Argent has an existing easement right for access to the northern end of its property, the intervening complex of ravines would prevent a road from being constructed south to the middle of its holding where it believes one or two areas may be sufficiently flat to permit development of building sites. The requested continuance was denied. As pointed out by staff, the entire Argent property appears to fall within the "no disturbance zone" established by the East Sammamish Community and Basin Plans, and further subdivision of the property seems unlikely. Accordingly, there is no public interest in establishing neighborhood circulation to areas lying west of Timberline Highlands Division 2 and no attendant legal basis for compelling the Applicant to dedicate a westerly access route.

CONCLUSIONS:

1. For purposes of imposing mitigations on the Timberline Highlands Division 2 proposal under SEPA authority pursuant to WAC 197-11-660, the date for identifying the policies, plans, rules or regulations designated by King County as a basis for the exercise of substantive SEPA authority is April 30, 1996, the date when the Timberline Ridge EIS documents were formally adopted by the County. By choosing to piggyback both its environmental review and proposed drainage system onto the larger Timberline Ridge project adjacent to the east, the Applicant opted to have completion of SEPA review of its project deferred until completion of the Timberline Ridge approval process and subsequent appeals. Based on the record, the avoidance or mitigation of adverse environmental impacts from the proposal requires the selective implementation of Sensitive Areas Ordinance requirements adopted in 1990 in order to protect wetlands, steep slopes and erosion hazard features on the site.
2. If approved subject to the conditions recommended below, the proposed subdivision makes appropriate provision for the public health, safety and welfare; serves the public use and interest; and meets the requirements of RCW 58.17.110.
3. The conditions of approval recommended herein, including dedications and easements, will provide improvements which promote legitimate public purposes, are necessary to serve the subdivision and are proportional to its impacts; are required to make the proposed plat reasonably compatible with the environment; and will carry out applicable state laws and regulations and the laws, policies and objectives of King County.

RECOMMENDATION:

APPROVE the preliminary plat of Timberline Highlands Division 2 as revised and received January 2, 1997, subject to the following conditions of final plat approval:

1. Compliance with all platting provisions of Title 19 of the King County Code.
2. All persons having an ownership interest in the subject property shall sign on the face of the final plat a dedication which includes the language set forth in the King County Council Motion No. 5952.
3. The area and dimensions of all lots shall meet the minimum requirements of the RS-15,000 zone classifications, or shall be as shown on the approved preliminary plat. Minor revisions to the plat which do not result in substantial changes may be approved at the discretion of the Department of Development and Environmental Services.
4. The applicant shall obtain final approval from the King County Health Department based on submittal of currently valid certificates of water and sewer availability.
5. All construction and upgrading of public and private roads shall be done in accordance with the King County Road Standards established and adopted by Ordinance No. 4463.
6. The applicant shall obtain the approval of the King County Fire Protection Engineer certifying the adequacy of the fire hydrant, water main, and fire to meet the flow standards of Chapter

17.08 of the King County Code. If all lots are 35,000 square feet in size or greater, or if the subdivision is outside an Urban Growth Area and developed at an overall density no greater than one residential building lot per five (5) acres, the subdivision is exempt per KCC 17.08.030.

7. Final plat approval shall require full compliance with drainage provisions set forth in King County Code 9.04 and the storm drainage requirements and guidelines as established by the Surface Water Management Division. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. The following conditions represent portions of the Code and requirements and shall apply to all plats.
 - a. Drainage plans and analysis shall comply with the 1990 King County Surface Water Design Manual and updates which were adopted by Public Rule effective January 1, 1995. DDES approval of the drainage and roadway plans is required prior to any construction.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings
_____ on file with DDES and/or the Department of Public Works.
This plan shall be submitted with the application of any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
8. The following conditions outline several Core Requirements from Chapter One in the SWM Drainage Manual. All other applicable drainage requirements in the manual shall also be addressed in the design of engineering plans.
 - a. Core Requirement No. 1: Discharge at the Natural Location. To prevent downstream erosion, storm water flows shall be connected into the off-site conveyance system constructed by the Timberline Ridge plat. This drainage concept requires a minor diversion of surface water which has been approved in the drainage variance for Timberline Ridge.
 - b. Core Requirement No. 3: Runoff Control. The proposed plat does not require on-site retention/detention of storm water. The drainage connection to the off-site tightline will convey storm water to Lake Sammamish which is designated by King County as an acceptable receiving water for direct discharge. The water quality facilities within the plat of Timberline Ridge may be used for conveyance of surface water to satisfy requirements for biofiltration. Proposed roof drains shall be connected into the primary conveyance system unless otherwise approved by King County for dispersion/infiltration.

- c. Special Requirement No. 5: Special water quality controls. Developments proposing direct discharge require treatment of runoff in a wetpond. The water quality facilities within the plat of Timberline Ridge may be used to satisfy this requirement.
9. All slopes 40% and greater shall be shown on the final engineering plans and recorded plat. The top-of-slope shall be field surveyed and shown with a minimum buffer of 50 feet unless a reduction in the buffer width is approved by DDES based on review of additional geotechnical evaluation of soil types, slope stability, grading, and drainage control; provided that, no residential structures shall be located closer than 25 feet from the top of the slope. The final approved buffer and the steep slopes shall include restrictions for retention of native vegetation and be recorded as a separate sensitive areas tract. A 15-foot building setback shall be shown from the edge of buffer. During review and approval of the individual building permits, a geotechnical report shall be submitted to evaluate grading and erosion control requirements for each individual lot. (KCC 21A.24.310; East Sammamish Community Development Condition No. 21.)
10. To prevent downstream erosion and a reduction in water quality, site clearing and grading and construction for roads, utilities, and drainage facilities shall occur only during the months of April through September. All bare ground shall be fully covered or revegetated outside these dates. Existing vegetation shall be retained on all lots until individual building permits are approved for their development. Individual building permit review may require lot owners to submit erosion control plans to address the impacts of construction and clearing of lot areas. (KCC 21A.24.220; East Sammamish Community Plan Policy NE-2, Development Conditions 20 and 21.)
11. A wetland report has been prepared by Terra Associate, Inc. dated November 26, 1996, identifying the wetland boundary below proposed Lots 6, 7, and 9. The wetland boundary below these lots has been field surveyed. The northerly extension of the wetland must also be delineated and surveyed prior to submittal of engineering plans. This Class 2 wetland shall be provided with a 50-foot wide buffer of undisturbed native vegetation, and it and the buffer shall be designated as a sensitive area tract. A 15-foot building setback shall be provided from the edge of the buffer. (KCC 21A.24.320; East Sammamish Community Plan Policy NE-2.)
12. Notes which address the building permit construction requirements for sensitive areas contained in these conditions shall be placed on the face of the recorded plat.
13. 203rd Place NE shall be improved as an urban minor access street. Section 4.01 in the 1979 Road Standards requires sidewalks on both sides for cul-de-sacs longer than 600 feet.
14. A second full-width public roadway which provides access from the Sahalee/Timberline neighborhoods shall be constructed and operational prior to recording Timberline Highlands Div.2. This requirement may be satisfied by completion of the southerly road connection on 205th Place NE required by the plat of Timberline Ridge or the northwest road connection on NE 42nd Street required by the plats of Chrysalis, Webers Ridge, and Old Mill Point.
15. All utilities within proposed rights-of-way must be included within a franchise approved by the King County Council prior to final plat recording.

16. This subdivision application was filed prior to the adoption of King County Code 14.75, Mitigation Payment System (MPS). The applicant or subsequent owner shall comply with King County Code 14.75 at the time of building permit issuance by paying the required MPS fee and administration fee as determined by the applicable fee ordinance. If the applicant or subsequent owner elects to pay the MPS fees at the time of final plat recording, the 1991 fee schedule shall be applied and a note placed on the face of the final plat that reads, "All fees required by King County Code 14.75, Mitigated Payment System (MPS), have been paid"; if the applicant or subsequent owner chooses to defer payment of the MPS fee until building permit issuance, the fee paid shall be the amount in effect as of the date of building permit application.
17. The planter islands, if any, within the cul-de-sacs shall be maintained by the abutting lot owners. This shall be stated on the face of the final plat.
18. The following note shall be shown on the final engineering plan and recorded plat:

**RESTRICTIONS FOR SENSITIVE AREA TRACTS AND SENSITIVE
AREAS AND BUFFERS**

Dedication of a sensitive area tract/sensitive area and buffer conveys to the public a beneficial interest in the land within the tract/sensitive area and buffer.

This interest includes the preservation of native vegetation for all purposes that benefit the public health, safety and welfare, including control of surface water and erosion, maintenance of slope stability, and protection of plant and animal habitat. The sensitive area tract/sensitive area and buffer imposes upon all present and future owners and occupiers of the land subject to the tract/sensitive area and buffer the obligation, enforceable on behalf of the public by King County, to leave undisturbed all trees and other vegetation within the tract/sensitive area and buffer. The vegetation within the tract/sensitive area and buffer may not be cut, pruned, covered by fill, removed or damaged without approval in writing from the King County Department of Development and Environmental Services or its successor agency, unless otherwise provided by law.

The common boundary between the tract/sensitive area and buffer and the area of development activity must be marked or otherwise flagged to the satisfaction of King County prior to any clearing, grading, building construction or other development activity on a lot subject to the sensitive area tract/sensitive area and buffer. The required marking or flagging shall remain in place until all development proposal activities in the vicinity of the sensitive area are completed.

No building foundations are allowed beyond the required 15-foot building setback line, unless otherwise provided by law.

19. A homeowners' association or other workable organization shall be established to the satisfaction of DDES which provides for the ownership and continued maintenance of the sensitive area tract(s) and/or open space area(s).

20. The applicant shall comply with the provisions of KCC 19.38 by either providing on-site open space or payment of the fee in-lieu of open space.
21. If lot make-up area is required, calculations demonstrating compliance, including the provision of sufficient flat, dry, usable open space, must be submitted prior to approval of the plan and profile. (This requirement is separate from and in addition to open space required in KCC 21.08.)
22. All lots adjoining an area or having area with an SAT restriction shall be provided with an acceptable boundary delineation between the lot or portions of the lot and the area restricted with the SAT. Said boundary delineation shall be in place prior to any grading or clearing of the subdivision and remain in place until a dwelling is constructed on the lot and ownership transferred to the first owner-occupant.

RECOMMENDED this 30th day of January, 1997.

Stafford L. Smith, Deputy
King County Hearing Examiner

TRANSMITTED this 30th day of January, 1997, to the following parties and interested persons:

Donald Barrett
Anil Butail
James Edwards
Joel Haggard, Esq
Ernest A. Jonson
Gail Kowall
John Mellor
June Michaels
Greg Borba, DDES/LUSD
Steve Bottheim, DDES/LUSD
Laura Casey, DDES/LUSD
Kim Claussen, DDES/LUSD
Peter Dye, DDES/LUSD
Curt Horner, Seattle-King Cty Health Dept
Rich Hudson, DDES/LUSD
King Conservation District
Tom Koney, King County Council

Garet Munger
Greg Nelson
Kent Robinson
Doug Rogers
C. Gary Simming
William N. Snell
Leal Spencer

Michaelene Manion, DDES/LUSD
Aileen McManus, DDES/LUSD
Lisa Pringle, DDES/LUSD
Carol Rogers, DDES/LUSD
Steven C. Townsend, DDES/LUSD
Bruce Whittaker, DDES/LUSD

NOTICE OF RIGHT TO APPEAL
AND ADDITIONAL ACTION REQUIRED

In order to appeal the recommendation of the Examiner, written notice of appeal must be filed with the Clerk of the King County Council with a fee of \$125.00 (check payable to King County Office of

Finance) **on or before February 13, 1997**. If a notice of appeal is filed, the original and 6 copies of a written appeal statement specifying the basis for the appeal and argument in support of the appeal must be filed with the Clerk of the King County Council **on or before February 20, 1997**. Appeal statements may refer only to facts contained in the hearing record; new facts may not be presented on appeal.

Filing requires actual delivery to the Office of the Clerk of the Council, Room 403, King County Courthouse, prior to the close of business (4:30 p.m.) on the date due. Prior mailing is not sufficient if actual receipt by the Clerk does not occur within the applicable time period. The Examiner does not have authority to extend the time period unless the Office of the Clerk is not open on the specified closing date, in which event delivery prior to the close of business on the next business day is sufficient to meet the filing requirement.

If a written notice of appeal and filing fee are not filed within fourteen (14) calendar days of the date of this report, or if a written appeal statement and argument are not filed within twenty-one (21) calendar days of the date of this report, the Clerk of the Council shall place a proposed ordinance which implements the Examiner's recommended action on the agenda of the next available Council meeting. At that meeting, the Council may adopt the Examiner's recommendation, may defer action, may refer the matter to a Council committee, or may remand to the Examiner for further hearing or further consideration.

Action of the Council Final. The action of the Council approving or adopting a recommendation of the Examiner shall be final and conclusive unless a proceeding for review pursuant to the Land Use Petition Act is commenced by filing a land use petition in the Superior Court for King County and serving all necessary parties within twenty-one (21) days of the date on which the Council passes an ordinance acting on this matter.

MINUTES OF THE JANUARY 16, 1997, PUBLIC HEARING ON DDES FILE NO. S098609 - PRELIMINARY PLAT OF TIMBERLINE HIGHLANDS DIVISION 2.

Stafford L. Smith was the Hearing Examiner in this matter. Participating at the hearing were Peter Dye, Kim Claussen, Steve Bottheim, Laura Casey, and Rich Hudson, representing the County; Greg Nelson, Kent Robinson, Anil Butail, Ernie Jonson, John Mellor and Donald Barrett.

The following exhibits were offered and entered into the hearing record:

- Exhibit No. 1 Department of Development and Environmental Services File No. S098609
- Exhibit No. 2 Department of Development and Environmental Services Preliminary Report, dated January 16, 1997
- Exhibit No. 3 Application dated July 11, 1996
- Exhibit No. 4 Environmental Checklist dated July 11, 1996
- Exhibit No. 5 Declaration of Nonsignificance dated September 16, 1996; Declaration of Significance dated January 20, 1988; and adoption and addendum to Timberline Ridge dated April 30, 1996
- Exhibit No. 6 Affidavit of Posting indicating December 9, 1996, as date of posting and December 11, 1996, as the date the affidavit was received by the Department of Development and

Environmental Services

- Exhibit No. 7 Plat map dated January 2, 1997 (revised)
- Exhibit No. 8 Land Use Map 535 E & W ; 540 E & W
- Exhibit No. 9 Assessors maps NW-NE-SW-SE 20-25-6
- Exhibit No. 10 Certificate of (A) Water and (B) Sewer Availability dated October 6, 1994
- Exhibit No. 11 Timberline Ridge (A) FEIS and (B) Addendum (File No. S058602)
- Exhibit No. 12 Examiner's report for Timberline Ridge (S058602)
- Exhibit No. 13 Geotech Report prepared by Terra Associates dated March 30, 1995
- Exhibit No. 14 Geotech Report prepared by Terra Associates dated December 26, 1996
- Exhibit No. 15 Wetland study prepared by Terra Associates dated November 26, 1996
- Exhibit No. 16 Conceptual drainage plan (received January 2, 1997)
- Exhibit No. 17 Revised preliminary plat of Timberline Ridge
- Exhibit No. 18 Letter dated January 14, 1997, from Joel Haggard, Esq. to Greg Nelson regarding vesting issues
- Exhibit No. 19 Determination of Significance and Scoping Notice
- Exhibit No. 20 Proposed addition to Condition No. 8 submitted by Applicant
- Exhibit No. 21 Proposed new Condition No. 19 submitted by Applicant
- Exhibit No. 22 Proposed revision to Condition No. 23 submitted by Applicant
- Exhibit No. 23 Letter dated January 15, 1997, from Ernest A. Jonson, President - Argent Ventures Corporation, to Examiner with attached letter from William Sell
- Exhibit No. 24 Testimony prepared by and read into hearing record by John Mellor
- Exhibit No. 25 Applicant's proposed Condition No. 9, as revised by staff
- Exhibit No. 26 Revised Condition No. 11 submitted by staff
- Exhibit No. 27 Revised Condition No. 18 submitted by staff
- Exhibit No. 28 Order on Motions for Reconsideration and Amended Final Order
- Exhibit No. 29 Revision to Shoreline Permit
- Exhibit No. 30 P21 Panhandle and Monohan Sub-basins
- Exhibit No. 31 Development Conditions-NW, East Lake Sammamish Basin Fig. 5a
- Exhibit No. 32 Administrative Guidelines February 1, 1987

SLS:daz

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